

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

WESLEY VICE AND NORMA
VICE
v.
BLUE CROSS BLUE SHIELD OF TEXAS,
A DIVISION OF HEALTH CARE SERVICE
CORPORATION, A MUTUAL LEGAL
RESERVE COMPANY

NOTICE OF REMOVAL

Health Care Service Corporation, a Mutual Legal Reserve Company, doing business through its division Blue Cross and Blue Shield of Texas (“BCBSTX”), respectfully removes this action to the United States District Court for the Eastern District of Texas, Beaumont Division.

INTRODUCTION

1. Plaintiffs have filed an Original Petition against BCBSTX in the 163rd Judicial District Court, Orange County, Texas, Cause No. B170068-C. BCBSTX first became aware of this action when it was served with the Petition and a citation on April 18, 2017. Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-81, BCBSTX has included copies of all process, pleadings, or orders served on it or by it as Exhibit 1 to this Notice of Removal.

2. BCBSTX files this removal notice within the 30-day period required in 28 U.S.C. § 1446(b).

GROUND FOR REMOVAL

3. This case is removable under 28 U.S.C. § 1441 based on federal diversity jurisdiction existing under 28 U.S.C. § 1332, for the following reasons:

a. Plaintiffs are and were at the time of the filing of the Plaintiffs' Original Petition ("Petition"), individual citizens of Texas. *See* Petition at 1. BCBSTX is currently, and was at the time of the filing of the Petition, an unincorporated division of Health Care Service Corporation, a Mutual Legal Reserve Company, a corporation incorporated in Illinois currently and at the time of the filing of the Petition, with its principal place of business in Illinois currently and at the time of the filing of Petition. *See* Exhibit 2.

b. Plaintiffs filed the instant case in the 163rd Judicial District Court, Orange County, Texas. Although the Petition does not specify the total amount of damages sought, Plaintiffs allege that their damages are "between 200,000 and 1,000,000.000 dollars." Petition at 2. It is therefore apparent from an analysis of Plaintiffs' allegations that the amount in controversy in this action exceeds the jurisdictional sum of \$75,000.00. *See St. Paul Reinsurance Co, Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

c. Complete diversity of citizenship between Plaintiffs and BCBSTX exists currently, and existed at the time that Plaintiffs filed their Petition; BCBSTX is not a citizen of Texas and was not at the time the Petition was filed; and the amount in controversy exceeds \$75,000. This case, therefore, is removable based on diversity jurisdiction.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place where the removed action has been pending. *See* 28 U.S.C. § 124(c)(2).

5. Pursuant to 28 U.S.C. § 1446(d), BCBSTX will promptly provide written notice of this removal to the 163rd Judicial District Court, Orange County, Texas.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

State Bar No. 00784510

LEVATINO|PACE PLLC

1101 S. Capital of Texas Highway

Building K, Suite 125

Austin, Texas 78746

Tel: (512) 637-1581

Fax: (512) 637-1583

Attorney for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business through its division Blue Cross and Blue Shield of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Removal has been forwarded via facsimile and/or e-mail on this 17th day of May, 2017, as follows:

E. Hart Green
Weller Green Toups & Terrell LLP
P.O. Box 350
Beaumont, Texas 77704-0350

/s/ Andrew F. MacRae

ANDREW F. MACRAE

Orange County District Court

801 W Division, Orange, 77630 TX. Phone: (409)882-7825 EXT

CASE HISTORY FOR CASE 170068-C

Wesley Vice et al VS. BlueCross BlueShield

FILED DATE: 3/7/2017

CASE TYPE: C/CONTRACT - NOTE/DEBT

STATUS: JURY DEMAND

JUDGE: 163rd District Court

CASE PARTIES:

Plaintiff Vice, Wesley

Plaintiff Attorney Green, E Hart

Defendant BlueCross BlueShield

Plaintiff Vice, Norma

Defendant Attorney MacRae, Andrew F.

CASE HISTORY FOR CASE 170068-C

Vice, Wesley

Current Age: Unknown

DOB: Unknown

DL#:

SSN: 000-00-0000

Total Paid: \$ 468.00

Balance Due: \$ 0.00

COST	AMOUNT	PAY PRIORITY
Action: PLAINTIFF'S ORIGINAL PETITION		
COMP PUB ACCT CV (DC) \$50.00	\$50.00	20
DISTRICT CLK'S FEE-CASE \$50.00	50.00	50
OR CTY SHERIFF FEE-CASE \$5.00	5.00	50
LAW LIBRARY FEES \$20.00	20.00	50
STENOGRAPHIC FEES \$15.00	15.00	50
COURTHOUSE SEC FUND \$5.00	5.00	50
REC MGMT PRES \$5. GC 51.317 (c)(2)	5.00	50
REC MGMT PRES FUND(CL-R) GC 51.317(c)(1)	5.00	40
JUDICIARY FEE	42.00	30
STATE:IND LGL(C)LGC 133.152 (a)(1)	10.00	30
APPELLATE JUD SUPPORT FEE	5.00	30
DC DIGITIZE CT. R. GC 51.708	10.00	40
DC ARCHIVE 51.305 (b)	10.00	40
STATE E-FILING (C) \$30 GC 51.851 (b)	30.00	20
Action: JURY DEMAND +		
JURY FEE	40.00	50
Action: CITATION REQUESTED (CERTIFIED MAIL)		
DISTRICT CLERK FEES : GENERAL	83.00	50
Action: CITATION REQUESTED (CERTIFIED MAIL)		
DISTRICT CLERK FEES : GENERAL	83.00	50
	Total:	\$468.00

DATE	TIME	DESCRIPTION
05/12/2017	10:34 am	Filing recorded: DEFT'S ORIG ANS + BlueCross BlueShield
04/20/2017	12:19 pm	Filing recorded: CITATION RETURNED + BlueCross BlueShield
04/18/2017	10:05 am	Received payment of \$83.00 from E Hart Green (EFILE) for Wesley Vice. Printed receipt #506303. Vice, Wesley

Print Date: 05/16/2017

Print Time: 2:13:52PM

Requested By: JUSTINRH

EXHIBIT 1
File: U:\Reports\CaseHistoryCivil.RPT

Page 1 of 2

CASE HISTORY FOR CASE 170068-C

04/13/2017	8:30 am	Filing recorded: CITATION/S ISSUED + BlueCross BlueShield
04/13/2017	8:30 am	JUSTINRH recorded the following Case Action Note: CM\RRR BlueCross BlueShield 4/13/2017 BlueCross BlueShield
04/13/2017	8:26 am	Filing recorded: CITATION REQUESTED (CERTIFIED MAIL) Vice, Wesley
04/12/2017	8:25 am	Filing recorded: E-FILE RECEIPT Vice, Wesley
03/20/2017	4:03 pm	Filing recorded: CITATION RETURNED - UNSERVED BlueCross BlueShield
03/10/2017	10:09 am	Received payment of \$385.00 from E Hart Green (EFILE) for Wesley Vice. Printed receipt #505257. Vice, Wesley
03/08/2017	4:44 pm	Filing recorded: CITATION/S ISSUED + BlueCross BlueShield
03/08/2017	4:44 pm	JUSTINRH recorded the following Case Action Note: CM\RRR BlueCross BlueShield 3/8/2017 BlueCross BlueShield
03/08/2017	4:43 pm	Filing recorded: CITATION REQUESTED (CERTIFIED MAIL) Vice, Wesley
03/08/2017	4:42 pm	JUSTINRH recorded the following Case Action Note: Scanned with Petition Vice, Wesley
03/07/2017	4:42 pm	Filing recorded: JURY DEMAND + Vice, Wesley
03/07/2017	11:04 am	Filing recorded: PLAINTIFF'S ORIGINAL PETITION Vice, Wesley
03/07/2017	11:03 am	Filing recorded: CASE INFORMATION SHEET Vice, Wesley
03/07/2017	11:02 am	Filing recorded: REQ FOR PROCESS FORM Vice, Wesley
03/07/2017	11:01 am	Filing recorded: E-FILE RECEIPT Vice, Wesley
03/07/2017	11:01 am	Filing recorded: *** E-FILED CASE *** Vice, Wesley

THE STATE OF TEXAS

To: Blue Cross Blue Shield of Texas
Corporation Service Company
211 East 7th Street, Suite 620
Austin TX, 78701-3218

Defendant, **NOTICE:**

YOU HAVE BEEN SUED. You may employ an attorney. If you or your Attorney do not file a written answer with the clerk who issued this citation by 10:00 A. M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Said **ANSWER** may be filed with the District Clerk's Office, Orange County Courthouse, 801 W Division Ave, Orange Texas 77630.

Said **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE** was filed and docketed in the 163rd District Court of Orange County, Texas at the District Clerk's Office at the Orange County Courthouse, 801 W Division Ave, Orange, Texas on March 7, 2017 in the following styled and numbered cause:

Cause No: 170068-C

Wesley Vice et al VS. BlueCross BlueShield

The name and address of the attorney for Plaintiff otherwise the address of Plaintiff is:

**E Hart Green
Weller Green Toups & Terrell LLP
P O Box 350
Beaumont, TX 77704-0350**

ISSUED AND GIVEN under my hand and seal of said Court at Orange, Texas, this April 13, 2017.



**VICKIE EDGERLY, District Clerk
Orange County, Texas**

Vickie Edgerly

CLERK'S RETURN FOR CERTIFIED MAIL

CAME TO HAND on the 13th day of April, 20 17, at 3:00 o'clock P.M. and executed in Orange County, Texas, by delivering to each of the within named defendants a true copy of this citation, by certified mail, return receipt requested, Addressee Only, the return receipt being attached to this citation and referred hereto for all pertinent purposes.

CERT. MAIL # 7190 0518 0010 0000 9555 DELIVERY DATE: _____ RETURN DATE: _____

ALTERNATE RETURN

CAME TO HAND on the _____ day of _____, 20____, at 3:00 o'clock P.M. and after due and diligent effort, having been unable to locate the within named Defendants in _____ by certified mail, return receipt requested, Addressee Only, for the reason shown on the return receipt attached to this citation and referred hereto for all pertinent purposes.

**VICKIE EDGERLY, District Clerk
Orange County, Texas**

By: _____ Deputy _____

B170068-C
CAUSE NO. _____

**WESLEY VICE AND
NORMA VICE
Plaintiff,**

v.

**BLUE CROSS AND
BLUE SHIELD OF TEXAS
Defendants.**

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

163rd JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION and REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Wesley Vice and Norma Vice ("Plaintiff") and files this Plaintiff's Original Petition, complaining of BlueCross BlueShield and for cause of action, Plaintiff would respectfully show this Honorable Court the following:

DISCOVERY CONTROL PLAN

Plaintiff intends discovery to be conducted under level 2. The suit is exempted from the expedited actions process. Plaintiffs' believes it should be controlled by Texas Rules of Civil Procedure 190.3 level 2 discovery.

PARTIES

Plaintiffs Wesley Vice and Norma Vice are individuals residing at 201 Lawrence Road, Orange, Texas 77630.

Defendant BlueCross BlueShield, a domestic non-profit Corporation and may be served with Citation by certified mail return receipt through Ronald Taylor 901 South Central Expressway, Richardson, Texas 75080.

JURISDICTION

This court has jurisdiction and the damages claimed are within the jurisdictional limits of the court. Plaintiffs' damages are between 200,000 and 1,000,000.000 dollars.

VENUE

Venue is proper in Orange County, Texas based on the following Civil Practice and Remedies Code Provisions:

1. §15.002 in that Orange County is the County in which all or a substantial part of the events or omissions giving rise to this claim occurred;
2. §15.032 in that Orange County is the County in which the loss has occurred and the County in which the Policy Holder resided at the time of the cause of action accrued.

FACTS

Wesley Vice was an insured of BlueCross/BlueShield of Texas beginning on or about August 1, 2014, under Policy ID 0923863208-4, Group number 1410 07. The policy was continuously in effect through December 31, 2015. Premiums were charged on a monthly basis. The premium charge was found on Defendant's website. Each month, the Vice's would pay the premium shown on the website for the billing cycle including December, 2015.

Sometime in mid to late 2015, the Vice's received correspondence from BlueCross/BlueShield alerting the Vice's that treatment at MD Anderson would no longer be covered by BlueCross/BlueShield as of January, 2016. Since Mrs. Vice had previously required treatment at M.D. Anderson, and the Vice's believed M.D. Anderson saved her life, they decided to find another company that would provide coverage for treatment at M.D. Anderson. Relying on these representations, the Vice's began shopping for alternative insurance coverage and, in

fact, were able to procure coverage effective January 1, 2016.

The Vices' premiums were invoiced and timely paid on a monthly basis. On December 2, 2015 Mr. Vice went to MD Anderson for an evaluation and pre-assessment. Surgery was recommended. BlueCross BlueShield specialist, Debbie G. pre-authorized the surgery and assigned a pre-authorization code number of 15336AAEFE on or about December 2, 2015.

Typically, pre-authorization requires that the adjuster/specialist:

1. Confirm that named insured listed on the policy;
2. Confirm the effective dates of the policy;
3. Confirm that the claim made is a covered claim;
4. Confirm that there are no exclusions.

The pre-authorization was approval for in-patient admission starting on December 3, 2015 for the requested surgeries.

On December 3, 2015 - consistent with the pre-authorization, Mr. Vice had surgery.

On December 9th Mrs. Vice went on-line as was her usual course of business and made payment for the stated premium shown on the webpage. This had been her normal course of action for the previous eighteen (18) months.

Unknown to the Vice's at the time, BlueCross/BlueShield initially denied Mr. Vice's MD Anderson treatment on or about December 19, 2015. The stated reason was that Mr. Vice was "not eligible".

On or about December 23rd Mr. Vice reached out to BlueCross BlueShield to discuss the December premium payment. The on-line portal indicated the December 2015 payment had been applied to January 2016 premium. Mr. Vice noted to the customer representative that the amount shown on the web portal for December, and paid in full, was an amount different than other premium payments. Mr. Vice wanted confirmation that the correct amount for December

had been paid and credited to his account. The representative told Mr. Vice that the payment would be and/or was applied to the December premium. There was no mention made of any additional monies owed.

Prior to December 31, 2015, the Vice's did not receive any correspondence that the Policy, that had been in effect for the previous two (2) years had lapsed, was being cancelled, was in a grace period or had any other issue. There was no notice that they had missed a payment, were late on a payment or the last payment or owed money on the policy.

Starting in January 2016 the Vice's began getting notices from MD Anderson that the Vices' owed MD Anderson \$35,695.00 for the pre-authorized surgery of December 3, 2015. When the Vice's attempted to determine, what had occurred, they were advised that their policy had cancelled for the month of December, with a new policy reinstated in January.

The Vice's made several written attempts to appeal. The requests were ignored. The Vice's sent an insurance code/DTPA notice letter to Defendant. There was no response. All conditions precedent to recovery and suit have been met

CAUSE OF ACTION

I. BREACH OF CONTRACT

Plaintiff and Defendant, BlueCross BlueShield of Texas entered into a written contract whereby Defendant agreed to provide health insurance coverage to Plaintiff for treatment of illness or disease such as that at issue. In fact, the treatment was pre-authorized and covered under the policy of insurance. Defendant failed to pay, thereby breaching the contract.

TEXAS INSURANCE CODE

1. Defendant violated §541.060(2) in failing to attempt in good faith to effectuate a prompt and equitable settlement of the Vices' claim when liability become reasonable clear;
2. Under Deceptive Trade Practice Violations, Defendant BlueCross BlueShield Violated §17.46(b)(5) in representing the policy had characteristics and benefits which it did not have and
3. Defendant violated §17.46(b)(12) in representing that the agreement conferred rights remedies or obligations which it does not have (especially as it related to the pre-authorization).
4. Furthermore, the acts and omissions in failing to timely pay constitute a violation of §542.051 prompt payment of claims.

DAMAGES

Plaintiffs are entitled to damages to include the following:

1. Mental anguish damages past and future for Wesley Vice;
2. Mental anguish damages past and future for Norma Vice;
3. Exemplary or punitive damages pursuant to statute;
4. Interest under the Texas Insurance Code;
5. Attorneys fees.

RULE 194 REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose within fifty (50) days of the service of this request, the information or material described in Rule 194.2.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs prays that Defendant be cited to appear and answer herein as the law directs, and that upon final hearing, Plaintiffs have and recover judgment of and from Defendants a sum in excess of the minimum jurisdictional amounts of this Court, costs of court, pre-judgment and post-judgment interest which may be authorized by law, and for such other and further relief, both general and special, at law and in equity, to which Plaintiffs' may be justly entitled.

Respectfully submitted,

WELLER, GREEN, TOUPS & TERRELL, L.L.P.
P O BOX 350
BEAUMONT, TEXAS 77704
(409) 838-0101
(409) 832-7823 (FAX)
hartgr@wgtlaw.com

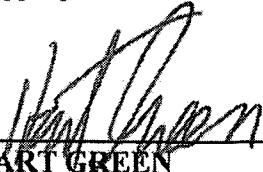


E. HART GREEN
STATE BAR NO. 08349290

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiffs demand a jury trial and tenders the appropriate fee with this petition.

BY 
E. HART GREEN

CAUSE NO. B170068-C

WESLEY VICE AND NORMA VICE, § IN THE DISTRICT COURT
§
Plaintiffs, §
§
v. § **ORANGE COUNTY, TEXAS**
§
BLUE CROSS BLUE SHIELD OF §
TEXAS, A DIVISION OF HEALTH §
CARE SERVICE CORPORATION, §
§
Defendants. 163RD JUDICIAL DISTRICT

ORIGINAL ANSWER

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, doing business through its division Blue Cross and Blue Shield of Texas¹ (“Defendant”), files this Original Answer.

Defendant denies each and every, all and singular, the material allegations contained in the Plaintiff’s Original Petition and demands strict proof by a preponderance of the evidence. This constitutes a general denial pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE.

WHEREFORE, PREMISES CONSIDERED, Defendant requests that Plaintiffs take nothing by this lawsuit and Defendant recover its costs. Defendant further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

¹ Plaintiffs filed suit against “Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation.” Blue Cross and Blue Shield of Texas is an unincorporated division of Health Care Service Corporation, a Mutual Legal Reserve Company.

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

State Bar No. 00784510

LEVATINO|PACE PLLC

1101 S. Capital of Texas Highway

Building K, Suite 125

Austin, Texas 78746

Tel: (512) 637-1581

Fax: (512) 637-1583

andrew@lpfirm.com

Attorney for Defendant
Health Care Service Corporation, a Mutual
Legal Reserve Company, doing business
through its division Blue Cross and Blue Shield
of Texas

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a true and correct copy of this Original Answer on May 12, 2017, via e-mail and/or electronic filing, to the following counsel of record:

E. Hart Green
Weller Green Toups & Terrell LLP
P.O. Box 350
Beaumont, Texas 77704-0350

/s/ Andrew F. MacRae

Andrew F. MacRae

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

WESLEY VICE AND NORMA
VICE

v.

BLUE CROSS BLUE SHIELD OF TEXAS,
A DIVISION OF HEALTH CARE SERVICE
CORPORATION, A MUTUAL LEGAL
RESERVE COMPANY

§
§
§
§
§
§
§
§

Case No. 1:17-cv-213

DECLARATION OF ANDREW F. MacRAE

STATE OF TEXAS §

COUNTY OF TRAVIS §

1. My name is Andrew F. MacRae. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct. I am counsel of record for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"), doing business through its division Blue Cross and Blue Shield of Texas ("BCBSTX").

2. HCSC is an Illinois corporation, with its principal place of business in Chicago, Illinois. Since December 31, 1998, BCBSTX has been, and still is, an unincorporated division of HCSC.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 17, 2017.

/s/ Andrew F. MacRae

Andrew F. MacRae

EXHIBIT 2